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9/4/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Javier CORTES-Magana,

Defendant

Magistrate Docket No.

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

COMPLAINT FOR VIOLATION OF:

DEPUTY

Title 8, U.S.C., Section 1326
Deported Alien Found in the
United States

'08 MJ 2727

The undersigned complainant, being duly sworn, states:

On or about **September 2, 2008** within the Southern District of California, defendant, **Javier CORTES-Magana**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

SIGNATURE OF COMPLAINANT

Jacob Sanchez
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 4th DAY OF SEPTEMBER, 2008

Leo S. Papas

UNITED STATES MAGISTRATE JUDGE

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CONTINUATION OF COMPLAINT:
Javier CORTES-Magana

PROBABLE CAUSE STATEMENT

On September 2, 2008, Border Patrol Agents E. Pepe, N. Nettles, Z. Seitles, and S. Kelley were performing assigned duties in and around the community of Boulevard, California. Boulevard is a rural community located approximately twenty miles east of the Tecate, California Port of Entry and approximately four miles north of the United States/Mexico International Border.

At approximately 6:00 P.M., Agents Pepe, Nettles, Seitles, and Kelley responded to a citizen's report of sixteen individuals walking northbound through the brush near the intersection of Starship Road and McKay Cut. As Agent Pepe drove towards the location of the citizen's report, Agent Kelley observed several individuals partially concealed in some bushes off to the side of Starship Road. Agent Pepe stopped the vehicle, and along with Agents Nettles, Seitles, and Kelley, approached the individuals. A total of 16 individuals, including one later identified as defendant **Javier CORTES-Magana**, were discovered hiding in the brush. Agent Pepe searched the surrounding area thoroughly, and was unable to locate any additional individuals, or any sets of footprints leading away from where the group was discovered. Agent Nettles questioned all 16 individuals about their citizenship. All 16 individuals, including the defendant, responded that they were citizens and nationals of Mexico, and that they did not have proper immigration documents to enter into or remain in the United States legally. All 16 individuals were arrested and transported to the Boulevard Border Patrol Station for processing.

Routine record checks of the defendant revealed a criminal and immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to **Mexico** on **April 2, 2008** through **San Ysidro, California**. These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.

The defendant was advised of his Miranda rights. The defendant stated that he understood his rights and was willing to answer questions without an attorney present. The defendant admitted that he is a citizen and national of Mexico illegally present in the United States. The defendant further admitted that he had been previously deported from the United States and has not applied or requested permission to re-enter the United States legally.